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BRIAN SAPIENT

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JOHN DOE A/K/A BRIAN SAPIENT,

Plaintiff,

v.

URI GELLER

and

EXLOROLOGISTS LTD.,

Defendants.

No. 3:07-cv-02478 VRW

DECLARATION OF KURT OPSAHL IN
SUPPORT OF PLAINTIFF'S OPPOSITION
TO MOTION TO DISMISS

Judge: The Hon. Vaughn R. Walker

Date: December 6, 2007

Time: 2:30 p.m.

Place: Courtroom 6, 17th Floor

**DECLARATION OF KURT OPSAHL IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**

I, Kurt Opsahl, declare under penalty of perjury:

1. I am a Senior Staff Attorney with the Electronic Frontier Foundation, counsel to Brian Sapient. I am submitting this Declaration in support of Plaintiffs' Opposition to Motion to Dismiss. I have personal knowledge of the facts stated herein, unless stated on information and belief, and if called upon to testify to those facts I could and would competently do so.

2. Uri Geller (Geller) maintains a website at <http://www.uri-geller.com>, and an online

1 diary or “blog,” at <http://uri-geller.blogspot.com>.

2 **Living in California**

3 3. Geller’s website hosts an article by John Northern Hilliard, entitled *Is Chaos*
4 *Necessary? Uri Geller in the Laboratory*. The article recounts Geller’s experience with the
5 Stanford Research Institute in Palo Alto, California, and references “Uri’s new home, an apartment
6 in south Palo Alto.” Attached hereto as Exhibit A is a true and correct copy of this article.

7 4. In a July 19, 2007 article from YnetNews.com about Geller’s new *Phenomenon*
8 television show on NBC (republished on Geller’s website and blog), the article notes: “The
9 program will force Geller to move to the United States. Geller revealed that he will be there for six
10 to eight weeks, and the network is already planning an additional season.” Attached hereto as
11 Exhibit B is a true and correct copy of this article.

12 **Advertising and Promoting in California**

13 5. On information and belief, in 1999, Geller promoted *Mind Medicine: The Secret of*
14 *Powerful Healing* (Element Books Ltd, October 1999) to residents of Northern California.
15 According to an article published in “J.”, the “Jewish news weekly of Northern California,” Geller
16 promoted his book to Northern California audiences. See Joshua Brandt, *Uri Geller moves from*
17 *bending spoons to healing mind*, J. (October 22, 1999). The article notes that “Uri Geller will
18 speak at 7:45 p.m. tomorrow at the Contra Costa Jewish Community Center, 2071 Tice Valley
19 Blvd., Walnut Creek. Information: (925) 938-7800. He will also speak Sunday at the Learning
20 Annex in San Francisco. Information: (415) 788-5500.” Attached hereto as Exhibit C is a true and
21 correct copy of this article.

22 6. Geller’s website hosts a July 22, 2000 article entitled *How to Host a Spoon-Bending*
23 *Party* by Cynthia Sue Larson, in which the author recounts “In the fall of 1999, I went to see Uri
24 Geller give a talk at a Learning Annex class in San Francisco.” Attached hereto as Exhibit D is a
25 true and correct copy of this article.

26 7. Geller’s website also contains a copy of a Reuters article about his efforts to
27 promote Mind Medicine. Reuters reported: “‘Just by being positive and believing in yourself, you
28 can help to heal your ailments,’ Geller told Reuters during a recent swing through San Francisco to

1 promote the book 'Mind Medicine'." Attached hereto as Exhibit E is a true and correct copy of
2 this article.

3 8. On information and belief, Geller also advertised *Uri Geller's Mind Power Kit*
4 (Penguin, 1996) to residents of the Northern District of California. "J." magazine confirmx Geller's
5 efforts in 1996 to advertise the Mind Power Kit. See Leslie Katz, *'Israeli psychic Uri Geller bends*
6 *spoons, minds in S.F.*, J. (November 29, 1996). The article notes "The tall, lanky Geller was in
7 San Francisco last week to teach a class at the Learning Annex and promote his new Mind Power
8 Kit, aimed at unleashing the 'sixth sense "Geller believes we all possess." Attached hereto as
9 Exhibit F is a true and correct copy of this article.

10 9. The Jewish Bulletin of Northern California Nov. 1996 listing of events also includes
11 Geller advertising his book to residents of Berkeley:

12 WEDNESDAY/20 7:30 PM "Mind Power Kit." Uri Geller. At Gaia Bookstore,
13 1400 Shattuck Ave., Berkeley. (510) 548-4178.

14 Attached hereto as Exhibit G is a true and correct copy of this list of events.

15 10. A December 1996 article in "Invisible Signals: The Office of Paranormal
16 Investigations - Newsletter" entitled *Uri Geller's Mind Power Workshop: A Summary & Review* by
17 Loyd Auerbach states: "To help promote the sales of the kit, Uri has been traveling the US
18 presenting a workshop derived from the kit and from his life experience. I attended his workshop
19 in San Francisco presented by the Learning Annex in late November." Attached hereto as Exhibit
20 H is a true and correct copy of this article.

21 11. On a page on Uri Geller's website, Geller republishes an article by "Thelma Moss,
22 Ph.D., The Neuropsychiatric Institute, Center for the Health Sciences, University of California at
23 Los Angeles" entitled *Uri's Magic*. The articles states that the "work reported here was conducted
24 in June 1975". In the article's appendix, it quotes a letter from a Pauline Figer of San Francisco:
25 "But I think my experience concerning Mr. Geller is even more amazing. He was on TV Channel
26 2 in Oakland, Calif., not so long ago." Attached hereto as Exhibit I is a true and correct copy of
27 this article.

28 12. In Uri Geller's autobiographical book *My Story* (Henry Holt & Company, Inc.,

1 April 1975), he recounts other promotional efforts in California: “I was doing follow-up
2 experiments at SRI and making the rounds on a lecture tour of colleges and universities. I visited
3 Yale, Stanford, Berkeley, Kent State, Bowling Green, North Carolina, and many other schools.”
4 Attached hereto as Exhibit J is a true and correct copy of this article.

5 13. Both Berkeley and Stanford are universities in the Northern District of California.

6 ***Phenomenon* Television Show**

7 14. On July 16, 2007, NBC Universal published a media release about *Phenomenon*.
8 According to the release, “NBC has signed a series deal with mystifier/artist Criss Angel (“Criss
9 Angel Mindfreak”) and famed mentalist Uri Geller for “Phenomenon” (working title) -- a
10 mysterious live competition series in which both men will conduct an intensive search for the next
11 great mentalist.” The article was republished on Geller’s website. Attached hereto as Exhibit K is a
12 true and correct copy of Geller’s webpage.

13 15. According to NBC, Geller is an “expert” and Explorologist Limited is a “creator” of
14 the Phenomenon television show. NBC also notes that the live show’s “origination” is Los
15 Angeles, California. Attached hereto as Exhibit L is a true and correct copy of NBC’s webpage.

16 16. In a July 28, 2007, article published on Geller’s website, Geller discusses efforts to
17 promote his show in Beverly Hills, California: “This autumn, I will team up with America’s best-
18 known mentalist magician, Criss Angel, to present a show called Phenomenon on NBC television.
19 ... The show was announced at the American Theatre Critics Association in the Beverley Hills
20 Hilton, LA, earlier this month (16 July) by Ben Silverman, the co-chairman of NBC Entertainment
21 and Universal Media Studios.” Attached hereto as Exhibit L is a true and correct copy of Geller’s
22 webpage.

23 17. Uri Geller wrote an article, posted on his website on August 4, 2007, in which he
24 recounts his efforts to advertise his new “US television show Phenomenon” to California radio
25 audiences: “The time difference between here and Los Angeles is giving me jet lag in my own
26 home — they’re eight hours behind England, so a 7pm call from a journalist on a California news
27 station will jerk me out of bed in the small hours of the morning.” Attached hereto as Exhibit M is
28 a true and correct copy of Geller’s webpage.

1 18. In a September 19, 2007 article on his website, Geller discusses his trip to Los
2 Angeles to create an advertisement for his show, which has been broadcast to California residents.
3 Geller discusses filming the advertisement “out in the California desert today, on a dry lake bed at
4 El Mirage.”

5 19. In the article, Geller also notes that the studio scenes were filmed next door to the
6 Tonight Show’s studio, which is in Burbank, California.

7 20. In the article, Geller describes further promotional efforts in California during his
8 trip to Los Angeles: “Yesterday I was interviewed by NBC’s publicity team, who wanted to know
9 what will make Phenomenon a show unlike any other.” Attached hereto as Exhibit N is a true and
10 correct copy of Geller’s webpage.

11 21. In another article on Geller’s website, he details his travels throughout Los Angeles,
12 including efforts “[t]o turn [Geller] into a native” of Los Angeles, California. Attached hereto as
13 Exhibit O is a true and correct copy of Geller’s webpage.

14 **Doing Business with California Entities**

15 22. The YouTube Terms of Use provide for sole jurisdiction in Santa Clara, California.
16 It also provides that “You agree that: (i) the YouTube Website shall be deemed solely based in
17 California; and (ii) the YouTube Website shall be deemed a passive website that does not give rise
18 to personal jurisdiction over YouTube, either specific or general, in jurisdictions other than
19 California.” Attached hereto as Exhibit P is a true and correct copy of the YouTube Terms of Use.

20 23. On information belief, Shimson “Shipi” Shtrang has had an account on Google’s
21 YouTube service since July 26, 2006. Attached hereto as Exhibit Q is a true and correct copy of
22 the account page for shipishtrang.

23 24. Geller has a blog on BlogSpot, which is hosted by Google’s Blogger service.
24 Attached hereto as Exhibit R is a true and correct copy of Geller’s blog.

25 25. Geller has operated his blog on BlogSpot prior to the events that gave rise to this
26 litigation. Attached hereto as Exhibit S is a true and correct copy of the Internet Archive’s record
27 of Geller’s blog as of January 2006, showing a post dated in March 2005.

28 26. The Blogger Terms of Service provides for sole jurisdiction in Santa Clara.

Attached hereto as Exhibit T is a true and correct copy of the Blogger Terms of Service.

27. Attached hereto as Exhibit U is a true and correct copy of a photograph hosted on Geller's blog, showing Geller standing before a five story tall picture of himself on the side of NBC's offices in Los Angeles.

28. YouTube, Blogger and Google are all based within the Northern District of California.

Pre-Filing Correspondence Between Counsel

29. On April 13, 2007, counsel for Brian Sapient sent a letter to Uri Geller regarding the DMCA notice that is the subject of this lawsuit.

30. Defendants' counsel responded on April 23, 2007 with several questions, Sapient's counsel replied on April 23, 2007, Defendants' counsel wrote again on April 30, 2007.

31. Correspondence continued by letters and email continued over the next week. On May 2, 2007, Defendant's counsel requested a telephone conference. On May 3, Sapient's counsel agreed, but informed Defendants' counsel "if we fail to reach a resolution immediately -- we will have no choice but to pursue the matter in court."

32. On May 4, 2007, Defendant's counsel stated he was unavailable until "[a]ny time after 2 on [M]onday," May 7, 2007. Accordingly, the parties engaged in a conference call on May 7, 2007, at around 2 p.m. EST.

33. Attached hereto as Exhibit V is a true and correct copy of the October 29, 2007, order in *Explorologists Ltd. v. Sapient*, Case No. 07-1848 (E.D. Penn), dismissing Explorologists' commercial disparagement claim, with leave to amend.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct to the best of my knowledge. Executed this 15th day of November, 2007, in San Francisco, California.

By _____/s/
Kurt Opsahl, Esq